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Newsletter

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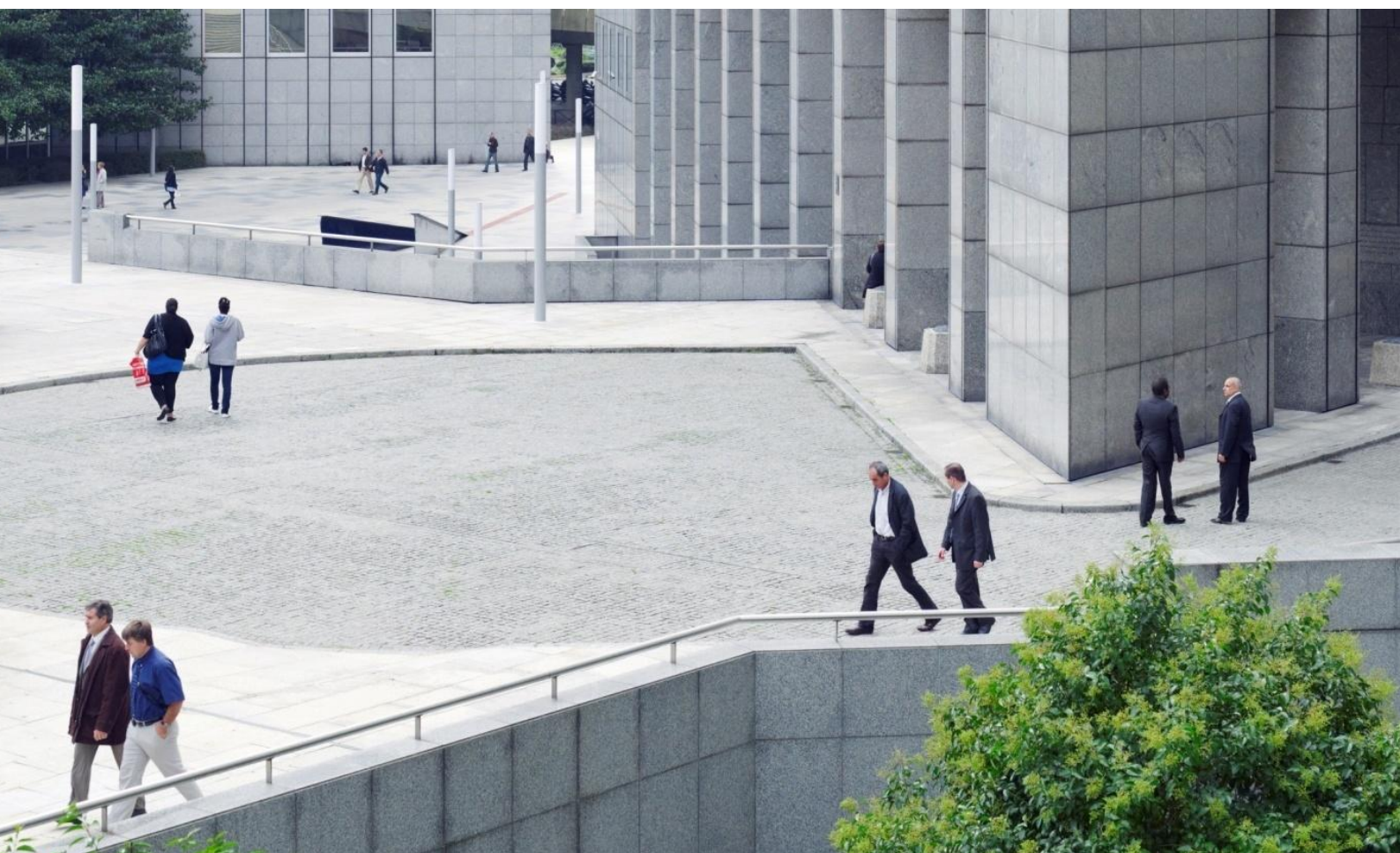
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The FIPB meeting

Some interesting cases discussed in the FIPB meetings held on 29 July 2013 and 27 August 2013, are as follows: –

1. Additional investment from the foreign collaborator in a brownfield pharma sector was approved
2. Acquisition of shares by a foreign company from residents as well as non-residents, pursuant to delisting of its Indian subsidiary company was approved
3. A proposal to acquire business assets of a US company and also 100% ownership of a UK company through part cash and part swap of shares of the Indian company was approved
4. The FIPB approved a proposal for issuance of CCPS, in lieu of the parent company meeting expenses of its offshore bank guarantees being invoked
5. Proposal to issue shares on transfer of assets from liaison office to a wholly-owned subsidiary was rejected by the RBI
6. Proposals involving services activities in the defence sector, by an Indian company with FDI were advised to access the automatic route



Sectoral regulations

Telecommunications

TRAI recommendations: Valuation and the reserve price of spectrum

The government has asked the TRAI to provide its recommendations on issues concerning the spectrum auction, after the DoT suffered a huge disappointment from incumbent telecom operators failing to participate in the November 2012 auction and operators whose licences were cancelled by the Supreme Court in February 2012 giving a tepid response.

The latest TRAI recommendations, 4th in a series starting 2010, 2011 & 2012 were issued on the 9th September 2013. They indicate a marked departure of the TRAI's previous stand on valuation of spectrum while recognising the financial burden and low margins of existing telecom operators in a gradually declining economy.

The key recommendations of TRAI are as follows:

- *No spectrum reservation for the renewal licensees in 900 or 1800 MHz bands.*
- *The DoT should come out with a clear roadmap indicating the quantum of spectrum which will be available in the future along with time-lines so that licensees whose licences are due for renewal in 2015-16 can take an informed decision about bidding for spectrum in the 1800 MHz band.*
- *The feasibility of adoption of E-GSM should be explored in a time-bound manner. The auction in the 800 MHz band should not be carried out now and TRAI has not recommended the reserve price for 800 MHz spectrum.*



- **Reserve prices for 1800 MHz spectrum Pan India is 1496 crore INR per MHz. (7480 crore INR for 5 MHz band, which is the minimum spectrum required to start telecom services).**
- **Reserve price for the 900 MHz spectrum for Delhi, Mumbai and Kolkata LSAs is 650 crore INR per MHz. (3250 crore INR for 5 MHz band).**
- *SUC for all auctioned spectrum, including BWA spectrum, should be at a flat rate of 3% of AGR of wireless services, while the highest slab rate of SUC for administered price spectrum is recommended to be brought down to 5% from the preset 8%.*
- **Spectrum trading should be permitted in the country and these transactions should be subject to the spectrum cap of 50% of the spectrum in a band and 25% of the total commercial spectrum assigned in an LSA, with a transfer fee of 1% of the transaction amount or the prescribed market price.**
- *The DoT should take up the matter with the RBI before the proposed auction, so as to ensure that commercial banks and other lending institutions are in a position to provide loans to telecom companies for participation in the auction.*

The above recommendations are not binding to the Government of India through the DoT and a final decision is now awaited.

Broadcasting

Renewal of the DTH licences

In September 2013, the MIB sought recommendations of the TRAI on certain terms and conditions for renewal of DTH licences. Considering the time-constraint, TRAI has requested additional time to examine the

matter, but in the interim, has recommended following additional conditions:

- Renewal of existing bank guarantee
- An undertaking to comply with the final policy

Education

Foreign universities will be allowed to open campuses in India

In a press release, the MHRD, Administrative Ministry for formulation of policies for education has sent a proposal to the DIPP and DEA to permit foreign universities for opening their campuses in India.

The MHRD has almost finalised the rules under which FEIs can set up campuses and issue foreign degrees. The rules will be Union Grant Commission (established and operation of campuses of Foreign Educational Institutions) Rules [UGC is entrusted with responsibilities of coordination, determination and maintenance of standards in institutions of higher education].

Under the proposed rules, FEIs will be allowed to set up campuses in India once they are notified as FEPs by the UGC. FEIs will be allowed to set up a company as a section 25 Company under the Indian Companies Act, 1956, being a non-profit entity.

Eligibility conditions required to be fulfilled by FEIs is as follows:

- Ranked among top 400 universities, globally
- Should be a not for profit legal entities
- Should have been in existence for at least twenty years
- Accredited by a reliable agency of the particular country
- Alternatively, an internationally accepted system of accreditation can be adopted

Each FEI will be notified as the FEP where such FEI maintains a corpus of not less than 250 million INR and satisfies the above mentioned conditions. Further, the degrees awarded by these FEPs will be treated as foreign degrees and the same shall be subject to equivalence accorded by the Association of Indian Universities as per their system.

Both the DIPP and DEA have supported the proposal.

Once the regulations are in place it will be possible for foreign universities to open up their campuses in India and provide foreign degrees.

UGC regulations

The **UGC**, has notified regulations for promotion and maintenance of standards for academic collaborations between **FEI** and **IEI**. These regulations will be called the *UGC (Promotion and Maintenance of Standards of*

Academic Collaborations between Indian and Foreign Educational Institutes) Regulations, 2012 ('Regulations').

The following are key highlights of the regulations:-

Applicability of regulations

These regulations shall apply to all FEI and IEI operating in India through collaboration and offering programmes leading to award of degree or post graduate diploma. However, these regulations shall not apply to technical institutions.

Where an IEI or FEI has existing collaborative arrangements, they will be required to comply with these regulations within a period of six months from the date of the regulations coming into force (i.e. September 21, 2013).

Key Conditions for collaboration

S.No.*	Criteria	FEI	IEI
a.	Accreditation	It will be required to be accredited with the highest grade in home country	It will be required to be accredited by national accreditation agencies with a grade not less than B or its equivalent grade
b.	Operative arrangement	FEIs shall have operative arrangements in India through IEs by way of collaboration	
c.	Experience and infrastructure requirements	FEI means an institution duly established or incorporated in its home country and has been offering educational programmes at the graduate and higher levels in its home country in the areas or disciplines concerned	It is required to have at least five years of experience in offering degrees of post graduate diploma in India and academic infrastructure to meet the requirements set out by relevant statutory body
d.	Maintenance of standards	It will ensure that the programmes of study	-

S.No.*	Criteria	FEI	IEI
		imparted in India are in conformity with the standards laid down by the respective statutory regulatory body	
e.	Grievances redressal	-	It will be responsible to address all the grievances of students including legal matters of collaboration

(*However, in case the IEI is maintained by central government or commission or a state Government, it shall not be required to comply with accreditation and experience conditions as mentioned in point 1 and 4 above).

Common conditions

The following additional conditions are required to be adhered under collaborative arrangement between an IEI and FEI:

- a. Academic requirements including details of the programme to be made public and to be displayed on the IEIs websites
- b. No programme of study and/or research to be offered which is against national security and territorial integrity of India
- c. Foreign exchange transactions to abide with the relevant regulations, norms, notifications and instructions issued by the Reserve Bank of India from time to time
- d. Educational institution to also abide by any other conditions specified by the Government of India or Statutory Bodies from time to time

Procedure for collaboration

The collaboration between FEI and IEI is required to be entered in form of a written **MOU** subject to following conditions:

- Before entering into collaboration, it is mandatory to seek prior approval of the UGC
- Approval of UGC is also required on the draft MOU
- MOU signed by both the parties is required to be forwarded to UGC
- MOU signed by both the parties is required to be uploaded on their websites

Procedure for Approval

The following is the procedure for approval:

A draft MOU/ Agreement for collaboration between FEI and IEI will be required to be submitted to UGC along with an application. The application shall contain details such as infrastructure facilities, faculty, funds for operations (for at least three years) and other terms of collaboration (IEI is required to take a prior approval of UGC including the approval of the draft MOU/ Agreement)



UGC to acknowledge the receipt of application within a week



Application shall be processed internally and any deficiency or need for additional documents etc shall be communicated within a period of one month



UGC to issue a letter of approval within a period of six months once it is satisfied with the proposal submitted to it. While providing its approval, UGC will consider the points like quality of education, merit of the proposal, fees to charged etc. However, where in case the proposal is rejected, UGC shall furnish a letter of rejection along with the reasons for rejection thereof



The approval granted shall be valid for a period of five years or as specified otherwise during which, UGC may extend or withdraw the approval or impose the conditions it deems fit on the basis of its review of progress and also inform the accrediting agencies about the results of review. In the event of any malpractices, the approval granted may be revoked

FEI and IEI cannot enter into a franchise arrangement nor an IEI can undertake educational activity in India by receiving license, permission etc for a consideration from an FEI.

SEZ

Clarifications in relation to the amendments in the SEZ (Amendments) Rules, 2013

Further to the amendments made by the DoC in the SEZ Rules in August 2013, the stakeholders sought clarifications on the implications and practical aspects of these amendments.

The main objective of introducing these amendments is to address the challenges faced by the SEZ developers as well as units and creating an investor- friendly environment, so that the objectives of the SEZ policy (*that is growth of economic activity, attracting investments, boosting exports and generating employment*) can be beneficially achieved.

With a view to address various queries and facilitate better understanding of the amendments, the DoC has issued clarifications on 13 September 2013.

Major highlights of the clarifications

Minimum land area requirements

In order to address the issue of aggregating large tracts of uncultivable land for setting up SEZs, the minimum land area requirements for various categories of SEZs have been reduced by half. This is aimed at permitting an optimum utilisation of land by the existing SEZs. Compliance to the vacancy as well as contiguity requirements of the land will still need to be followed. A new sector namely, the agro-based food processing sector has also been introduced which will have a minimum land area requirement of 10 hectares.

De-notification of an SEZ

In order to prevent any possible misuse of such de-notified parcels of land by developers, the DoC has clarified that it will consider applications which fulfill the following criteria:

- All such proposals must have an unambiguous no-objection certificate obtained from the respective state governments
- The state governments may also ensure that such de-notified parcels will be utilised towards the creation of infrastructure, which will promote the objective of the SEZ, as originally envisaged
- Post the de-notification process, the land use guidelines or master plans of the respective state governments will become applicable
- The aforementioned conditions are over and above the conditions already imposed by the Board of Approval such as the refund of duties or the benefits availed by the developers on such land

Broad-banding of the sector

The broad-banding provisions have been introduced for sectors in order to encompass similar or related aspects within each broad-banded area and treated as a single sector, for the purpose of minimum land area criteria. It has been clarified that the principle of broad-banding will be applicable by taking into account the fact that no additional environmental externalities will be required for additional units that might come up on account of such broad-banding initiatives.

Some examples of broad-banding categories include the following:

- Textile, apparel, hosiery, fashion garments, wool and carpets
- Leather, leather handicrafts, leather garments and sports goods
- Auto components or parts, light engineering

- Biotechnology, pharmaceuticals and chemicals
- IT, ITeS, electronic components and hardware manufacturing, non-conventional energy, BPO (including legal, medical and similar such services), KPO and R&D activities

The BoA will have the discretion to allow additional categories to be broad-banded into a sector, based on the compatibility of area requirements

Graded scale for the minimum land area criteria

The DoC has clarified that the graded scale for the minimum land area (wherein for each contiguous 50 hectares of land parcel within an existing notified SEZ, an additional sector will be allowed) has been introduced with the objective of providing an element of flexibility to the developer so as to allot land to the respective units, thereby encouraging an optimal utilisation of the SEZ land.

Vacancy norms

It has been clarified that in a situation when an additional land parcel has been acquired to an existing SEZ, and it contains a pre-existing structure such as a port or a manufacturing unit in which no commercial, industrial or economic activity is in progress, the fiscal incentives will be available only on the additions or upgradations made after the inclusion of this land within the respective SEZ. Authorised operations carried out on such infrastructure will also be eligible for such benefits.

Transfer of assets by SEZ units upon an exit

The DoC has reiterated that SEZ units may discontinue of the SEZ scheme by transferring their respective assets as well as liabilities to another entity by way of

transfer of ownership, including sale, provided that the departing SEZ unit holds a valid letter of approval, possesses the lease of the land for at least five years, and has been in operation for at least two years. The transfer shall have to be approved by the Unit Approval Committee.

The applicable duty liabilities (if any) and the export obligations shall stand transferred to the new entity, which shall be under an obligation to discharge the same under the same terms and conditions as the transferee company.

Defence

RBI notifies changes in FDI Policy

The RBI has recently notified the changes in FDI policy announced by the Government of India. As per the revised policy, FDI in defence production beyond 26% will be allowed on a case-to-case basis where transfer of state-of-the-art technology is involved and will be subject to approval from the Cabinet Committee on Security, subject to the following **additional conditions**:

- Investment by FIIs through portfolio investment will not be permitted;
- All application seeking permission of the Government for FDI in defence would be made to the Secretariat of the FIPB in the Department of Economic Affairs;
- Applications for FDI up to 26% will follow the existing procedure with proposals involving inflows in excess of Rs. 1200 crore being approved by CCEA. Applications seeking permission of the Government for FDI beyond 26% will in all cases be examined additionally by the DoDP from the point of view particularly of access to modern and 'state of the art' technology;

- Based on the recommendation of the DoDP and FIPB, approval of the CCS will be sought by the DoDP in respect of cases which are likely to result in access to modern and 'state of the art' technology in the country;
- Proposals for FDI beyond 26% with proposed inflow in excess of Rs. 1200 crores, which are to be approved by CCS will not require further approval of the CCEA.

The revised FDI policy gives clarity of the approval ladder which will be followed in the cases which involve FDI beyond 26% (with transfer of the 'state of the art' technology). However, the press note has also put a restriction on investment by FIIs through portfolio investment scheme. This restriction puts a question mark on the ability of Indian listed companies in defence sector to have access to FII investment and also on the flexibility of the existing FII investors to deal in securities of such companies.



Corporate regulations

FDI

Acquisition of shares of a listed Indian Company on the stock exchange under the FDI scheme

The RBI has liberalised the FDI policy to allow non-residents, including NRIs, to acquire shares of listed companies on recognised stock exchanges through a registered broker, provided the non-resident investor has already acquired, and continues to hold control, in accordance with the **SEBI** Takeover Code.

A.P. (DIR Series) Circular No 38, 4 September 2013

Guidelines amendment for calculation of total foreign investment in Indian companies, transfer of ownership and control of the Indian companies and downstream investment

The RBI has clarified that the facility of making downstream investments through internal accrual is available to all Indian companies, and not just to an Indian Company engaged in the activity of investing in the capital of another Indian company.

AP (DIR Series) Circular No 42, 12 September 2013

Issuing bank guarantee on behalf of the person resident outside India for FDI transactions

RBI has now permitted AD bankers to issue bank guarantee, without prior approval of the RBI, on behalf of a non-resident acquiring shares or convertible debentures of an Indian company through open offers, delisting, exit offers, provided the following:

- The transaction is in compliance with the provisions of the SEBI Takeover code



- The guarantee of the AD banker is covered by a counter guarantee of a bank of international repute and is co-terminus with the offer period.

AP(DIR Series) Circular No 37, 5 September 2013

RBI has notified changes in FDI policy

Pursuant to FDI policy amendments in various sectors, and revised definition of control as announced by the DIPP in August 2013, the RBI has issued a circular notifying such changes in FEMA

AP (DIR Series) Circular No 44, 13 September 2013

ECB

ECB for the general corporate purpose from the foreign equity holder

Eligible borrowers may now avail the ECB from their foreign equity holder **for meeting expenses towards general corporate purposes under the approval route**. This will be subject to compliance with certain conditions, such as the following:

- A minimum paid-up equity of 25% should be held directly by the lender
- Repayment of the principal shall commence only after completion of minimum average maturity of 7 years; no prepayment will be allowed before maturity

All other aspects of extant ECB guidelines shall remain unchanged

AP (DIR Series) Circular No 31, 4 September 2013



Liberalisation of definition of Infrastructure Sector

Definition of the infrastructure sector for the purpose of ECB Regulations has been modified and clarified as follows:

i) Newly additions : Social and commercial infrastructure sectors	
<ul style="list-style-type: none">• Hospitals (capital stock and includes medical colleges and para-medical training institutes)• The hotel sector which will include hotels with fixed capital investment of 200 crore INR and above, convention centres with fixed capital investment of 300 crore INR and above and three star or higher category classified hotels located outside cities with a population of more than one million (fixed capital investment is excluding of land value)• Common infrastructure for industrial parks, SEZs, tourism facilities• Fertiliser (capital investment)• Post harvest storage infrastructure for agriculture and horticulture produce including cold storage• Soil testing laboratories	
ii) Sectors defined in detail	
Energy (earlier Power)	<ul style="list-style-type: none">• Electricity generation, electricity transmission, electricity distribution• Oil pipelines and gas pipelines (includes city gas distribution network)• Oil, gas, liquefied natural gas, storage facility (includes strategic storage of crude oil)
Communication (earlier Telecommunication)	<ul style="list-style-type: none">• Mobile telephony services, companies providing cellular services• Fixed network telecommunication (includes optic fibre, cable networks which provide broadband and internet)• Telecommunication towers
Transport (earlier Road including bridges, sea-ports and airport)	<ul style="list-style-type: none">• Railways (railway track, tunnel, viaduct, bridges and includes supporting terminal infrastructure such as loading, unloading terminals, stations and buildings)• Roads and bridges• Ports and inland waterways• Airport• Urban public transport (except rolling stock in case of urban road transport)
Water and sanitation	<ul style="list-style-type: none">• Water supply pipelines• Solid waste management, water treatment plants, sewage projects (sewage collection, treatment and disposal system)• Irrigation (dams, channels, embankments, etc) and storm water drainage system

A.P. (DIR Series) Circular No 48, 18 September 2013

Trade credits for import into India

Presently, AD Category - I banks are empowered to permit trade credit facility not exceeding 20 million USD up to a maximum period of five years (from the date of shipment) for companies in the infrastructure sector, subject to certain terms and conditions.

It has now been decided that companies in all sectors will be permitted to avail such facility of trade credit not exceeding 20 million USD up to a maximum period of five years for import of capital goods as classified by Director General of Foreign Trade (DGFT).

A.P. (DIR Series) Circular No 53, 24 September 2013

Borrowing in the Indian currency: Onlending and temporary parking in FDs permitted

As per the current regulations, the amount borrowed in rupees from a person resident outside India can only be used by the borrower for its own business and cannot be specifically used for any investment, whether by way of capital or otherwise, in any company or partnership firm or proprietorship concern or any entity, whether incorporated or not, or for relending.

The RBI issued a notification on 17 September 2013 making an amendment in the Foreign Exchange Management (borrowing and lending in rupees) Regulations by which the RBI may now permit resident entities and companies to use such borrowed funds:

- On lending and re-lending to the infrastructure sector
- Fixed deposits with banks in India pending utilisation, for permissible end-uses

Notification no FEMA. 287/2013 – RB

Refinancing and rescheduling of existing ECB

Existing facility available under the approval route of refinancing an existing ECB by raising fresh ECB at a higher all-in-cost, rescheduling an existing ECB at a higher all-in-cost has been discontinued with effect from 1 October, 2013.

A.P. (DIR Series) Circular No 59 dated 30 September 2013

1. Amendments in the trade credits

Imports into India - Companies in all sectors (earlier companies in the infrastructure sector) have been permitted to avail trade credit not exceeding 20 million USD up to a maximum period of five years for import of capital goods. Further, the contract period of 15 months has been reduced to six months for all trade credits.

A.P. (DIR Series) Circular No 53 dated 24 September 2013

ODI: Reduction in ceiling

Pursuant to the reduction in ceiling for ODI investments in **JV, WOS** from 400 to 100% of net worth of the Indian party, the RBI has issued following clarifications in this regard:

Financial commitment

- For the financial commitment **already contracted on or before 14 August 2013**, the earlier limit of 400% under the automatic route will apply. Such investments shall not be subject to any unwinding or approval from the RBI.
- The financial commitments which were **not contracted until 14 August 2013** in the existing JV, WOS (including for the purpose of setting up of and acquiring step down subsidiaries outside India) by the Indian party will be permitted **under the automatic route only up to the revised limit of 100%**. Existing investments made by the Indian party will also be reckoned towards calculation of the revised limit of 100%.

- Investment in an existing overseas JV, WOS of another Indian party (either by way of transfer of existing stake or by way of fresh contribution) will constitute a fresh financial commitment by the new party and will have to be within the revised limit of 100%, under the automatic route.
- Applications already forwarded to the RBI or the AD bank on or before 14 August 2013 will be examined and dealt with by the RBI or the AD bank under the guidelines existing prior to 14 August 2013.

ODI funded out of foreign exchange

As hitherto, ODI funded out of the following:

- ECB proceeds can be made upto 400% of net worth of the Indian Party under the automatic route
- Earners of foreign currency account or funds raised by way of American Depository Receipts or global depository receipts, no limit will apply

A.P. (DIR Series) Circular No 30, 4 September 2013

Clarification on LRS for resident individuals

The RBI has issued following clarifications with respect to recent amendment made to the LRS scheme:

Overseas investments by resident individuals

Under the revised guidelines¹, resident individual can make investments in both unlisted and listed shares of an overseas company.

Remittance limit for transactions in India permissible under Schedule III to the Foreign Exchange Management (Current Account Transaction) Rules

Resident individuals can remit up to 75,000 USD per financial year under the LRS window over and above the limits prescribed for transactions (excluding gifts and donations) permissible under Schedule III of Current Account Transaction Rules.

Remittance for acquisition of immovable properties

Resident individuals who have already entered into contracts on or before 14 August 2013 will be permitted to make remittances for acquiring immovable property within the annual limit of 75000 USD, subject to satisfaction of the genuineness of the transactions by the AD bank.

A.P. (DIR Series) Circular No. 32, 4 September 2013

Exports of goods and softwares: Simplification and revision of declaration forms

The revised forms for declaration of export of goods and services are as follows:

1. **EDF:** all kinds of export of goods from **non-EDI** ports. Form EDF has replaced existing forms, GR and PP
2. **SOFTEX form:** To declare single as well as bulk software exports, and hence, replaced existing SOFTEX and bulk SOFTEX forms
3. **SDF form:** Continues to apply as hitherto in case of ports having EDI facility

Under the revised procedure, the exporters will have to declare all the export transactions in the applicable form, including transactions of less than 25,000 USD.

¹ With effective from August 5, 2013, vide Notification FEMA 263/2013-RB dated March 5, 2013

The above procedure will come into force from 1 October 2013.

A.P. (DIR Series) Circular No. 43, 13 September 2013

Export and import of currency

The limit for any person resident in India taking outside India or having gone out of India on a temporary visit, bringing into India (other than to and from Nepal and Bhutan) currency notes has been increased from INR 7,500 per person to INR 10,000 per person.

AP (DIR Series) Circular No 39, 6 September 2013

No requirement of prior or subsequent listing in India for the unlisted Indian companies

Currently, unlisted Indian companies are not allowed to directly list in the overseas markets without prior or simultaneous listing in Indian markets. With an intent to liberalisation, the government has issued a press release, which once notified, will allow an Indian company to raise capital abroad without prior or subsequent listing in India.

It is proposed that this scheme will be implemented on a pilot basis for two years and then reviewed. Till such a time, though, the Indian companies will need to seek approval of the Union Finance Minister and be subjected to the following conditions:

- Unlisted companies may be allowed to list abroad only on exchanges in IOSCO, FATF compliant jurisdictions or those jurisdictions with which SEBI has signed bilateral agreements.

- The companies have to file a copy of the return which they submit to the proposed exchange or regulators also to SEBI for the purpose of Prevention of Money Laundering Act. Further they have to comply with SEBI's disclosure requirements in addition to that of the primary exchange prior to the listing abroad.
- While raising resources abroad, the listing company has to be compliant with the existing FDI policy.
- The capital raised abroad may be utilised for retiring outstanding overseas debt or for operations abroad including for acquisitions.
- In case the funds raised are not utilised abroad as stipulated above, then such companies shall remit the money back to India within 15 days.

Necessary notification will be issued by the MoF, DIPP and the RBI in order to implement the required changes to the existing rules.

Press release dated 27 September 2013

Company Law

MCA issues notification for commencement of 98 sections in the Companies Act, 2013

The Companies Act, 2013, earlier passed by both the houses of the Parliament has received the assent of the President of India on 29 August 2013. The government has vide its notification dated 12 September 2013, notified that 98 sections of the Companies Act, 2013 shall come into force with immediate effect. These provisions have been listed below:

List of the applicable provisions under the Companies Act, 2013

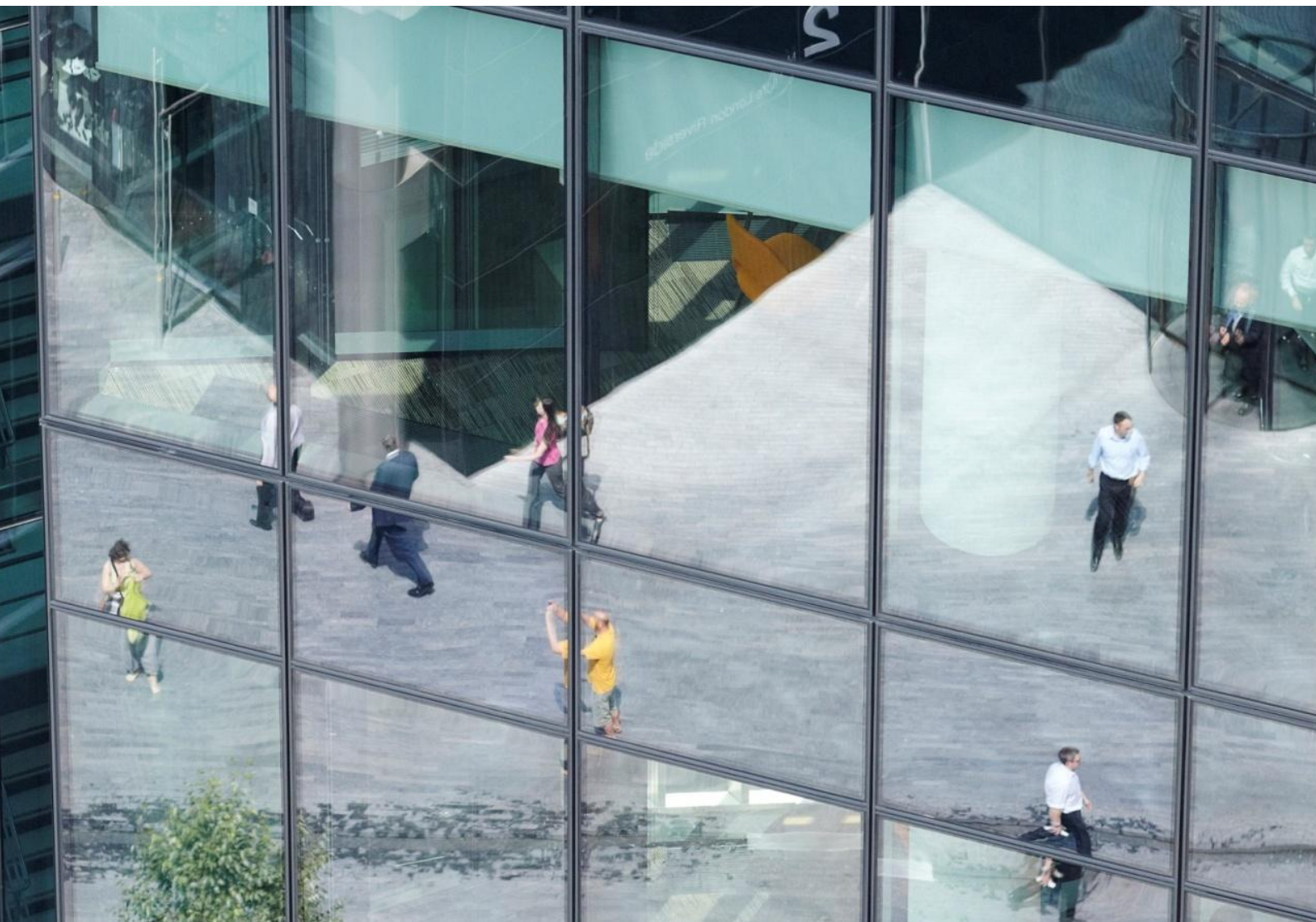
Chapter I		Preliminary
1	Section 2 [except Clause (2),(7),(13),(23) , Sub-Clause (iv) of Clause (29),(31), (41),(42)(47),(48),(62),Sub-Clause (ix) of Clause (67),(83),(85), proviso and Explanation (d) of Clause (87)]	Definitions
Chapter II		Incorporation of the company and matters incidental thereto
2	Section 19	Subsidiary company not to hold shares in its holding company
3	Section 21	Authentication of documents, proceedings and contracts
4	Section 22	Execution of bills of exchange, etc
Chapter III		Prospectus and allotment of securities
5	Section 23 [except Clause (b) of sub-section (1) and Sub-section (2)]	Public offer and private placement
6	Section 24	Power of the Securities and Exchange Board to regulate issue and transfer of securities, etc
7	Section 25 [except sub-section (3)]	Document containing the offer of securities for sale to be deemed prospectus
8	Section 29	Public offer of securities to be in a dematerialised form
9	Section 30	Advertisement of prospectus
10	Section 31	Shelf prospectus
11	Section 32	Red herring prospectus
12	Section 33 [except sub-section (3)]	Issue of application forms for securities
13	Section 34	Criminal liability for misstatements in prospectus
14	Section 35 [except clause (e) of sub-section (1)]	Civil liability for misstatements in prospectus
15	Section 36	Punishment for fraudulently inducing persons to invest money
16	Section 37	Action by affected persons

17	Section 38	Punishment for personation for acquisition, etc, of securities
18	Section 39 [except sub-section (4)]	Allotment of securities by a company
19	Section 40 [except sub-section (6)]	Securities to be dealt with in stock exchanges
Chapter IV		Share capital and debentures
20	Section 44	Nature of shares or debentures
21	Section 45	Numbering of the shares
22	Section 49	Calls on shares of the same class to be made on a uniform basis
23	Section 50	Company to accept the unpaid share capital, although not called up
24	Section 51	Payment of dividend in proportion to the amount paid-up
25	Section 57	Punishment for personation of a shareholder
26	Section 58	Refusal for registration and appeal against refusal
27	Section 59	Rectification of the register of members
28	Section 60	Publication of authorised, subscribed and paid-up capital
29	Section 65	Unlimited company to provide for a reserve share capital on conversion into a limited company
30	Section 69	Transfer of certain sums to a capital redemption reserve account
31	Section 70 [except sub-section (2)]	Prohibition of a buy-back in certain circumstances
Chapter VI		Registration of charges
32	Section 86	Punishment for contravention
Chapter VII		Management and administration
33	Section 91	Power to close the register of members or debenture-holders or other security holders
34	Section 100 [except sub-section (6)]	Calling an extraordinary general meeting
35	Section 102	Statement to be annexed to the notice
36	Section 103	Quorum for meetings
37	Section 104	Chairman of meetings
38	Section 105 [except the third and fourth <i>proviso</i> of sub-section (1) and sub-section (7)]	Proxies
39	Section 106	Restriction on voting rights
40	Section 107	Voting by a show of hands
41	Section 111	Circulation of the members' resolution
42	Section 112	Representation of the president and governors in meetings

43	Section 113 [except clause (b) of sub-section (1)]	Representation of the corporations at the meeting of the companies and creditors
44	Section 114	Ordinary and special resolutions
45	Section 116	Resolutions passed at an adjourned meeting
	Chapter VIII	Declaration and payment of dividend
46	Section 127	Punishment for failure to distribute dividends
Chapter IX		Accounts of companies
47	Section 133	Central government to prescribe accounting standards
Chapter XI		Appointment and qualifications of directors
48	Section 161 [except sub-section (2)]	Appointment of the additional director, the alternate director and the nominee director
49	Section 162	Appointment of the directors to be voted individually
50	Section 163	Option to adopt a principle for proportional representation for the appointment of directors
Chapter XII		Meetings of the board and its powers
51	Section 176	Defects in the appointment of directors not to invalidate the actions taken
52	Section 180	Restrictions on powers of the board
53	Section 181	Company to contribute to bona fide and charitable funds, etc
54	Section 182	Prohibitions and restrictions regarding the political contributions
55	Section 183	Power of the board and other persons to make contributions to the national defence fund, etc
56	Section 185	Loan to directors etc
57	Section 192	Restriction on the non-cash transactions involving directors
58	Section 194	Prohibition on the forward dealings in securities of company by the director or a key managerial personnel
59	Section 195	Prohibition on insider trading of securities
Chapter XIII		Appointment and remuneration of managerial personnel
60	Section 202	Compensation for the loss of office of the managing or whole-time director or the manager
Chapter XXII		Companies incorporated outside India
61	Section 379	Application of the Act to the foreign companies
62	Section 382	Display of the name, etc, of the foreign company
63	Section 383	Service of the foreign company
64	Section 386 [except clause (a)]	Interpretation
Chapter XXIII		Government companies
65	Section 394	Annual reports of the government companies

Chapter XXV		Companies to furnish the information or the statistics
66	Section 405	Power of the central government to direct the companies to furnish information or statistics
Chapter XXVII		National Company Law Tribunal and Appellate Tribunal
67	Section 407	Definitions
68	Section 408	Constitution of the National Company Law Tribunal
69	Section 409	Qualification of the president and the members of the tribunal
70	Section 410	Constitution of the Appellate Tribunal
71	Section 411	Qualifications of the chairperson and the members of the Appellate Tribunal
72	Section 412	Selection of the members of the tribunal and the Appellate Tribunal
73	Section 413	Term of office for the president, the chairperson and other members
74	Section 414	Salary, allowances and other terms and conditions of service of the members
Chapter XXVIII		Special courts
75	Section 439	Offences to be non-cognizable
76	Section 443	Power of the central government to appoint the company prosecutors
77	Section 444	Appeal against acquittal
78	Section 445	Compensation for accusation without a reasonable cause
79	Section 446	Application of fines
Chapter XXIX		Miscellaneous
80	Section 447	Punishment for fraud
81	Section 448	Punishment for a false statement
82	Section 449	Punishment for false evidence
83	Section 450	Punishment where no specific penalty or punishment is provided
84	Section 451	Punishment in case of a repeated default
85	Section 452	Punishment for wrongful withholding of property
86	Section 453	Punishment for improper use of "Limited" or "Private Limited"
87	Section 456	Protection of any action taken in good faith
88	Section 457	Non-disclosure of information in certain cases
89	Section 458	Delegation by the central government of its powers and functions
90	Section 459	Powers of the central government or the tribunal to accord approval, etc, subject to the conditions and to prescribe fees on the applications

91	Section 460	Condonation of delay in certain cases
92	Section 461	Annual report by the central government
93	Section 462	Power to exempt a class or classes of companies from provisions of this Act
94	Section 463	Power of the court to grant relief in certain cases, enactments and savings
95	Section 467	Power of the central government to amend schedules
96	Section 468	Powers of the central government to make rules relating to the winding up
97	Section 469	Power of the central government to make rules
98	Section 470	Power to remove difficulties



Perspective

Clearing the mist: Foreign investment in SEBI registered AIFs

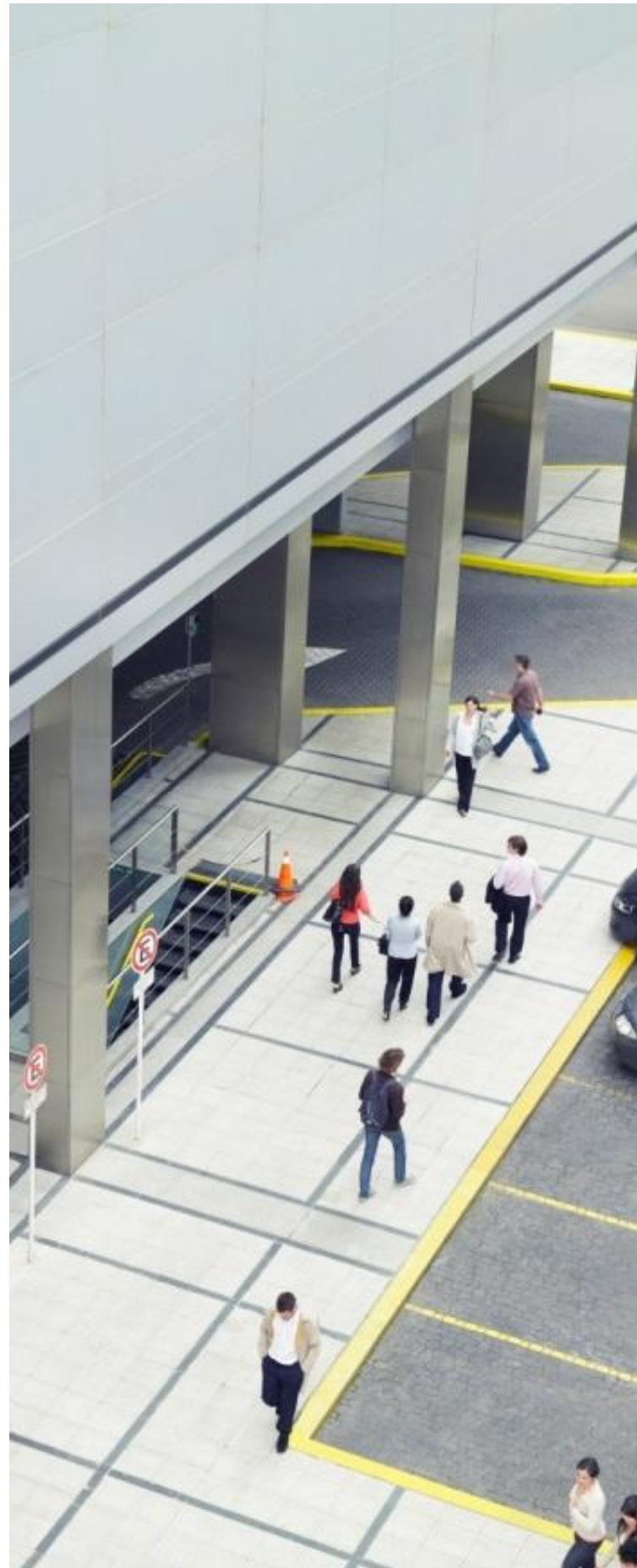
India has recognised certain types of collective investment devices such as collective investment schemes, mutual funds, VCF, etc. The SEBI vide the SEBI (Alternative Investment Fund) Regulations, 2012 (AIF Regulations) broadened the scope and categories of the collective investment devised to include infra funds, private equity funds, debt funds, hedge funds etc.

AIF regulations enforce a different set of conditions on its different categories. These categories (as defined in AIF regulations) have been listed below:

- Category I AIF: Includes VCFs, SME funds, social venture funds(SVFs), infrastructure funds and angel investor funds(AIFs)
- Category II AIF: The residual category, typically the private equity funds, debt funds, etc)
- Category III AIF: Hedge funds and other high risk funds

AIF regulations replace VCF regulations

The AIF regulations aim to recognise the needs of each type of private pooling vehicles so that such funds can be channelised in the right direction and in a regulated manner without posing any systemic risk. This is a welcome policy change as it increases the scope of investment for various investment sectors and provides a different set of rules with regard to the respective sector, and the nature of the fund. The AIF regulations replace the earlier regulatory framework that covered the different kinds of funds under the VCF framework. It referred to the VCF set up as a fund which



primarily invests in unlisted VCUs which are not a part of the negative list (like gold financing and NBFCs).

Though SEBI has framed new AIF regulations, several loose ends have to be tied. Clarifications from the regulatory authorities, especially with respect to the foreign investment in AIFs are awaited.

No clarity on foreign investments

There is no clear policy for foreign investments in the AIFs in the FDI policy regime. The consolidated FDI policy circular still uses the term VCF, AIF hasn't replace VCF as it had been anticipated during the review of the consolidated FDI policy dated 5 April 2013. Whether foreign investment in the AIFs is permitted or not continues to remain unclear since the FDI policy does not permit any foreign investment in trusts other than a VCF registered under the VCF regulations.

There is also an ambiguity regarding which category of AIF would replace VCF in the FDI policy.

The AIF regulations also allow an AIF to be setup as a LLP. However, the FDI policy does not permit any downstream investments by LLPs having foreign investments. With AIFs setup as LLP, as allowed under the AIF regulations, the flexibility of raising foreign capital has been effectively ruled out since downstream investment by such AIF shall not be permitted.

With the AIF regulations completing more than one year, it would be helpful if the regulatory authorities can come out with a clear policy with respect to foreign investment in AIFs and throw more light on which category of AIFs is permitted to receive foreign funds and also amend the FDI regulations, wherever required.

- Pankaj Kwatra (manager, Regulatory Services)



Glossary

AoP	Association of persons
BoA	Board of approval
BPO	Business process outsourcing
BTP	Biotechnology park
CCEA	Cabinet Committee on Economic Affairs
CCPS	Compulsorily Convertible Preference Shares
CCS	Cabinet Committee on Security
CSR	Corporate social responsibility
DC	Development commissioner
DEA	Department of Economic Affairs
DGFT	Directorate General of Foreign Trade
DIPP	Department of Industrial Policy and Promotion
DoC	Department of Commerce
DoDP	Department of Defence Production
DTA	Domestic tariff area
EDF	Export declaration form
EHTP	Electronic hardware technology park
EOU's	Export oriented units
FAQ	Frequently asked questions
FDI	Foreign direct investment
FEIs	Foreign educational institutions
FEMA	Foreign Exchange Management Act
FEPs	Foreign education provider
FIIIs	Foreign institutional investors
FIPB	Foreign Investment Promotion Board
FSSAI	Food Safety and Standards Authority of India
FY	Financial year
IEC	Importer exporter code
INR	Indian rupee
IT	Information technology
JV	Joint venture
KPO	Knowledge process outsourcing
LLP	Limited liability partnership
LoA	Letter of approval
LRS	Liberalised Remittance Scheme
MBRT	Multi-brand retail trading
MCA	Ministry of Corporate Affairs
MHRD	Ministry of Human Resource Development
MIB	Ministry of Information and Broadcasting
MoC	Ministry of Commerce
MoU	Memorandum of association
NBFCs	Non-banking financial companies
NEFT	National Electronic Funds Transfer
NRI's	Non resident Indians
ODI	Overseas direct investments
PIB	Press Information Bureau
R&D	Research and development
RA	Regional authorities
RBI	Reserve Bank of India
RIO	Reference Interconnect Offer

SBRT	Single brand retail trading
SEBI	Securities Exchange Board of India
SEZ	Special economic zone
STP	Software technology park
SUC	Spectrum usage charge
The Bill	The Companies Bill
TRAI	Telecom Regulatory Authority of India
UAC	Unit approval committee
UGC	University Grant Commission
USD	United States dollar
USSD	Unstructured supplementary service data
UTs	Union Territories
VCF	venture capital funds
VCUs	venture capital undertakings
WOS	Wholly owned subsidiary

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